

DIRECT TESTIMONY
OF
TORSTEN CLAUSEN

TELECOMMUNICATIONS DIVISION
ILLINOIS COMMERCE COMMISSION

DOCKET NO. 03-0772

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1 **Q. Please state your name and business address.**

2 A. My name is Torsten Clausen and my business address is 160 N LaSalle St, Suite
3 C-800, Chicago, Illinois 60601.

4 **Q. What is your occupation?**

5 A. I am a Policy Analyst in the Telecommunications Division of the Illinois
6 Commerce Commission ("Commission").

7 **Q. Please describe your educational and occupational background.**

8 A. I graduated in 1997 from the University of Giessen, Germany with a Bachelor of
9 Arts in Business and Economics. In May 2000, I was awarded a Master of
10 Science degree in Economics from the University of Wyoming.

11 The University of Wyoming M.S. in Economics degree program concentrates
12 specifically on the economics of regulation. The graduate courses taken during
13 this program include *Telecommunications: Policy and Regulation, Public Utilities*
14 *Economics, Advanced Industrial Organization and Public Policy*, and a seminar in
15 *Regulatory Economics*. My Master's thesis is entitled *Pricing based on Total*
16 *Element Long Run Incremental Cost: An Economic Evaluation*. It analyzes the
17 economic and other consequences of the FCC's use of the TELRIC costing
18 methodology and explores alternatives.

19 From May to August of 1999, I was employed as an intern in the Policy
20 Department of the Telecommunications Division with the Commission. In this
21 capacity, I performed research and analysis of local telecommunications
22 competition and other policy related issues. Among other duties, I examined the
23 effects of current Illinois Commerce Commission rules on arbitrated

1 interconnection agreements, and contributed to a statutory, regulatory and
2 judicial treatise on telecom regulation by providing analysis of the FCC's
3 interconnection order (*Implementation of the Local Competition Provisions of the*
4 *Telecommunications Act of 1996*, CC Docket No. 96-98). During such internship,
5 I also assisted Telecommunications Division staff in various docketed cases,
6 including Case No. 98-0555, the Ameritech/SBC merger, 98-0860,
7 SBC/Ameritech Service Reclassification, and numerous interconnection
8 agreements. I started working full time as a Policy Analyst in the
9 Telecommunications Division in June 2000.

10
11 **Q. Have you previously testified before the Commission?**

12 A. Yes. Among other cases, I provided testimony in ICC Dockets No. 03-0593
13 (establishment of a batch hot cut process pursuant to the TRO), 00-0312/00-
14 0313 (Rhythms/Covad & SBC arbitration), 00-0393 (SBC's line sharing tariff
15 investigation), 01-0338 (TDS Metrocom & SBC arbitration), and 99-0615
16 (revisions to IL Admin. Code Part 790).

17
18 **Q. What is the purpose of your testimony?**

19 A. I am addressing issues 1, 2, 3, 4, 6, 9, 10, 12, 14, 15, 16, 17, 18 and 24 in this
20 arbitration.

21
22 **Issue 1**

23 **Q. Does SBCI still dispute that it is required to allow the resale of ICBs?**

1 A. No. The issue seems not to be whether UCS may resell ICBs but rather how that
2 right is memorialized in the agreement.

3
4 **Q. SBCI is proposing several provisions concerning the resale of ICBs. Can**
5 **you address those proposed provisions in the sequence SBCI addresses**
6 **them please?**

7 A. Yes. The first provision is found in Section 3.1.21.1. SBC's proposed language
8 appears in underlined font and UCS' proposed language appears in *italic font*.

9
10 3.1.21.1 SBC Illinois will make available ICBs for resale by CLEC at the
11 rates, terms and conditions set forth in this Section 3.1.21. As used in this
12 Agreement Appendix Resale, an "Individual Case Basis contract" or "ICB"
13 is a specific written contract between SBC Illinois and an End User under
14 which SBC Illinois provides only a Telecommunications Service or
15 Telecommunications Services that is/are required to be resold under
16 Applicable Law to such End User at a rate and/or on terms and conditions
17 that differ from an SBC Illinois retail tariff, including Telecommunications
18 Services that are required to be resold under Applicable Law that are not
19 offered under any SBC Illinois retail tariff.

20
21
22 **Q. What are your observations concerning the proposed language?**

23 A. It is my understanding that the first three changes are undisputed. SBCI's
24 attempts, however, to clarify that (a) SBCI is not required to offer non-
25 telecommunications services for resale, and (b) UCS is prevented from reselling
26 services for certain purposes seem to be less than successful. In fact, SBCI's
27 proposed language make the section look quite confusing. I agree with SBCI
28 that non-telecommunications services need not be offered for resale and I agree
29 that UCS may not resell telecommunications service to provide exchange access
30 or interconnection services to other telecommunications or for its own use. The

1 FCC stated as much in paragraphs 873-875 in its First Report and Order.¹ The
2 language proposed by SBCI does not, however, in my opinion, bring out such
3 intent clearly. In addition, I am not aware that UCS is attempting to accomplish
4 the prohibited actions mentioned above. Nevertheless, since SBCI is entitled to
5 specify those exceptions, it should be done in a manner that stays true to the
6 FCC's pronouncements in this area.

7
8 **Q. What is your proposed language in this area?**

9 A. I recommend that the Commission order the following language be included in
10 section 3.1.21.1:

11
12 "SBC Illinois will make available ICBs for resale by CLEC at the rates,
13 terms and conditions set forth in this Section 3.1.21. As used in this
14 Agreement, an "Individual Case Basis contract" or "ICB" is a specific
15 written contract between SBC Illinois and an End User under which SBC
16 Illinois provides a Telecommunications Service to such End User at a rate
17 and/or on terms and conditions that differ from an SBC Illinois retail tariff,
18 including Telecommunications Services that are not offered under any
19 SBC Illinois retail tariff. Nothing in Section 3.1.21.1 shall require SBC
20 Illinois' to offer non-telecommunications services or exchange access
21 services for resale. In addition, nothing in Section 3.1.21.1 shall require
22 SBC Illinois to make services available for resale to parties who are
23 purchasing service for their own use. Further, it is reasonable and
24 nondiscriminatory for SBC Illinois to restrict the resale of a
25 telecommunications service (or a feature or functionality of the service) to
26 customers being served by a specific wire center in the event the service
27 (or a feature or functionality of the service) is available from that specific
28 wire center only."
29

30 The third and second to last sentences reflect the allowed resale restrictions
31 specified by the FCC. In fact, they represent the paragraphs of the FCC's First

¹ First Report and Order at ¶¶ 873-875.

1 Report and Order that SBCI quotes as a basis for its proposed language.

2
3 **Q. SBCI states that it “should not be forced to think of (and specify in this**
4 **ICA) each possible” resale restriction scenario. What is your response?**

5 A. I do not know what other possible resale restriction SBCI might “think of”. Even if
6 SBCI happens “to think of” a resale restriction, that in itself does not translate into
7 a reasonable and non-discriminatory restriction. Quite to the contrary, Section
8 51.613(b) provides that “an incumbent LEC may impose a restriction only if it
9 proves to the state commission that the restriction is reasonable and
10 nondiscriminatory.” I wholeheartedly agree with Mr. Smith’s contention that the
11 list of resale restrictions “is not endless.”² More to the point, the list ends exactly
12 at the restrictions mentioned above and can be expanded only after SBCI proves
13 to this Commission that the proposed restriction is reasonable and
14 nondiscriminatory.

15
16 **Q. Is there a restriction that you believe the Commission should find to be**
17 **reasonable and nondiscriminatory?**

18 A. Yes. As stated in the discussions concerning issues 4, 10, and 14, I believe that
19 a restriction based on the limited technical availability of a service or feature or
20 functionality of a service should be deemed reasonable and nondiscriminatory.
21 While I do not know the likelihood of such a situation occurring in the context of
22 the services at issue in this arbitration, I am generally aware that SBCI employs

² SBCI Ex. 1.0 p. 7, line 172.

different equipment at different locations in its Illinois service territory. For this reason, I included the last sentence in my proposed section 3.1.21.1.

Q. What is the next disputed provision?

A. SBCI is proposing the following language to be included in section 3.1.21.3:

In addition to assuming an ICB and reselling such ICB to the original End User that purchased such ICB from SBC Illinois (the "Original End User"), CLEC may resell ICBs to Similarly Situated End Users other than the Original End User. CLEC may (i) assume an ICB for the remaining term only; or (ii) subject to the last sentence of 3.1.21.2.1 above, resell an ICB to a Similarly Situated End User for the same term to end no later than the same month as the contract provided to the Original End User.

Q. What reasons does SBCI provide for its proposed language?

A. SBCI provides two reasons for limiting UCS' right to assume or resell an ICB only for the same time period that the ICB is available to SBCI's end users. First, if there were no time limits on UCS' right to resell an ICB, and the original ICB is not offered by SBCI anymore, UCS would in effect be reselling a service that the ILEC does not provide at retail, something Section 251(c)(4) does not contemplate. Second, SBCI argues that its costs for providing such ICB might increase over time, potentially forcing SBCI to provide services at a loss.

Q. Do you agree with SBCI's argument?

A. In principle, yes. I have two observations in this regard. First, I find it more likely that SBCI's costs will *decrease* over time, given the history of declining equipment prices in the telecommunications industry. Such a scenario should

1 not present a problem for UCS, however, if lower costs result in the availability of
2 new ICBs with lower rates. Second, there is a tension between SBCI's proposed
3 requirements with respect to the resale of ICBs to new end users. As will be
4 seen in the discussion of issue 4, SBCI insists that new end users "are able to
5 comply with the [...] *contract term* of such ICB, in each case as expressly stated
6 in the ICB contract."³ The requirement for the new end user (or group of end
7 users) to comply with the original term commitment presents a problem when
8 SBCI insists that the contract with the new end user terminate at the same time
9 SBCI's offering to its own end user expires. For example, UCS might use an ICB
10 to sign up a new customer 4 months after SBCI first executed such ICB with one
11 of its own end users. If SBCI's original ICB has a contract term of 3 years and
12 UCS' resold ICB is required to terminate on the same date the original contract
13 expires, UCS' resold ICB cannot possibly comply with the 3-year contract term
14 requirement. For this reason, I propose to change the definition of similarly
15 situated end user to either delete the words "contract term" or to include the
16 following provision: "The contract term for a similarly situated end user is
17 shortened by the time period it takes CLEC to execute an available ICB." Third,
18 while I believe that the proposed language is appropriate for the handling of ICBs
19 going forward, I recommend that the Commission allow for some modifications
20 for existing ICBs.

21
22 **Q. Please explain.**

23 **A.** SBCI is trying to give the impression that it never opposed the resale of ICBs.

³ SBCI Ex. 1.0 p.26, lines 669-673.

1 The petition and the testimony of both parties, however, seem to suggest
2 otherwise. It is particularly noteworthy that SBCI never made its ICBs publicly
3 available until now and only recently agreed to post them on a new website. In
4 fact, SBCI asks for 20 days after the effective date of the ICA “in order to allow
5 SBC Illinois to ‘ramp up’.” Similarly, SBCI stated “by the effective date of the ICA,
6 SBC Illinois will notify UCS how to place orders for reselling ICBs.”⁴
7

8 I believe UCS should not be punished for not having had access to information
9 concerning available ICBs. It is for this reason that I propose the Commission
10 afford UCS the opportunity to resell a small portion of currently existing ICBs. I
11 recommend avoiding taking an all-or-nothing approach to the resale availability of
12 existing ICBs. SBCI proposes that it be required to post ICBs only after the
13 effective date of the agreement. While SBCI does not state this explicitly, I
14 assume, SBCI does not envision making available ICBs that were entered within
15 6 months prior to the effective date. UCS, on the other extreme, is proposing
16 that SBCI make available “all of its ICBs (i.e., existing and in effect).”⁵ As a
17 reasonable compromise, I propose that SBCI should make available for resale,
18 for a period not to exceed 6 months, the ICBs it entered into within the last 12
19 months (from the effective date of the agreement). To address SBCI’s concerns
20 regarding unreasonably short remaining contract terms, I recommend limiting the
21 available ICBs further to those that have at least two-thirds of the original
22 contract term remaining on the date UCS signs up a new end user. For example,

⁴ Id. p. 21, lines 543-544.

⁵ Joint statement of Craig Foster and Chris Surdenik p. 24, line 14.

1 assuming an effective date of the agreement of July 1, 2004, UCS would have
2 until December 2004 to resell a three-year ICB SBCI originally entered into in
3 December 2003.
4

5 **Q. What is SBCI's third and final proposed provision in issue 1?**

6 A. SBCI proposes to add the words "when applicable" to section 3.1.21.6 where it
7 states that "SBC-4STATE's provision of ICBs pursuant to this Section 3.1.21 is
8 subject to the general provisions of Section 3.1 of the Agreement." SBCI's
9 rationale is to clarify that not all of the terms in section 3.1 are applicable to UCS'
10 resale of ICBs. SBCI uses LifeLine and Link-Up services as examples.

11
12 **Q. Do you find the addition appropriate?**

13 A. I see no reason why the addition should not be allowed. To clarify the intent,
14 however, I recommend adding the example provided by SBCI's testimony. The
15 section would then read "SBC-4STATE's provision of ICBs pursuant to this
16 Section 3.1.21 is subject to the general provisions of Section 3.1 of the
17 Agreement, when applicable (e.g., not applicable to LifeLine and Link-Up
18 services)."
19

20 **Issue 3**

21 **Q. What is the parties' disagreement in issue 3?**

22 A. The disagreement revolves around the proper wholesale discount for ICBs.
23

24 **Q. Are the parties arguing that the Commission set a permanent discount for**

ICBs in this arbitration?

A. No. In fact, both SBCI and UCS ask for a separate cost proceeding to determine the appropriate discount for ICBs. The parties differ in their opinion as to what constitutes a reasonable interim discount rate for ICBs.

Q. Is there much discussion concerning the appropriate discount for an assumption of an ICB, i.e., when the end user stays the same?

A. No. It appears that the discussion concerns almost exclusively the proper discount for the resale of ICBs to new end users.

Q. Do you believe SBCI's proposed interim discount rate of 3.16% is appropriate?

A. As I argue further below, and the parties seem to agree, this arbitration is not the proper venue to set permanent discount rates for all ICBs. Having said that, I did notice that UCS does not appear to be strictly opposed to using the 3.16% as interim rate for the assumption of ICBs. If that is indeed the case, Staff will obviously not prevent the parties from agreeing to an interim rate for assumption of ICBs for the purposes of this agreement. I do note, however, that I believe that SBCI still has the burden to demonstrate that ICBs should generally carry a lower discount rate than tariffed offerings. Unless and until this happens in a separate cost proceeding, SBCI should continue to use the same discount for both ICBs and tariffs.

1 **Q. SBCI argus that its proposed 4.6% discount rate for the resale of ICBs to**
2 **new end users is derived from the same cost study that produced the**
3 **3.16% discount rate for ICB assumptions. What is your response?**

4 A. First, the fact that the Commission approved the 3.16% discount for ICB
5 assumptions in several interconnection agreements (and by SBCI's logic, the
6 underlying cost study) does not dispose of the issue. Given the fact that SBCI
7 did not make its ICBs publicly available to CLECs, it is hard to imagine that a
8 substantial number of ICBs were ever assumed by CLECs, if any. In addition,
9 solely because no CLEC has, to date, complained about the discount rate to the
10 Commission does not mean the Commission cannot find that such rate does not
11 comply with the federally mandated avoided cost standard. Finally, since I
12 recommend that all ICBs (assumption or new end user) should continue to be
13 discounted in the same manner as tariffed services are discounted, it really is of
14 no import which proposed cost study is the basis for the proposed interim rate of
15 4.16%.

16
17 **Q. Do you believe UCS' proposal of requiring a 20.07% interim discount rate**
18 **for the resale of ICBs to new end users should be adopted?**

19 A. No. It is important to keep in mind that the 20.07% referenced by UCS is the
20 average discount for all resale services. In other words, even if the Commission
21 were to agree with UCS that ICBs should receive the same level of discount as
22 the tariffed services on a permanent basis, it is unlikely that the average discount

1 for services typically found in ICBs is anywhere close to the average for all resale
2 services.

3
4 **Q. Do you believe the Commission should adopt SBCI's proposed discount**
5 **rate of 4.6% for the resale of ICBs to new end users in the interim?**

6 A. No. While I agree that UCS' proposed 20.07% discount rate is inappropriate, I
7 do not immediately recognize the perceived differences in the avoided cost of
8 ICBs versus the avoided cost of tariffed services. It is SBCI's obligation to
9 demonstrate that the avoided cost for ICBs is significantly lower than the one for
10 tariffed services, particularly when the services comprising ICBs are so closely
11 related to the corresponding tariffed services. In addition, I agree with the parties
12 that the Commission should not use this arbitration to approve or disapprove cost
13 studies brought forward by SBCI. Hence, I recommend the Commission require
14 SBCI to provide ICBs for resale to new end users at the same discount it is
15 required to make tariffed services available for resale. SBCI should not impose a
16 lower discount rate for ICBs without having demonstrated in a proper cost
17 proceeding that they should be lower, even in the interim.

18
19 **Issue 4**

20 **Q. What is the proposed definition of "similarly situated end user"?**

21 A. The proposed definition looks as follows: (again, SBCI's language appears in
22 underlined font, while UCS' proposed language appears in *italic font*.

1 “As used herein, a “Similarly Situated End User” means an End User or an
2 aggregation (subject to Section 3.1.2 above) of End Users who, as
3 compared to the Original End User (i) are in the same class (i.e.,
4 residential versus business), (ii) do not have different network architecture
5 or configuration requirements, and (iii) are able to comply with the volume
6 commitment, termination liability, contract term and, if applicable, any
7 Material Condition(s) of such ICB (e.g., the service or a feature or
8 functionality of the service is available from a specific wire center only), in
9 each case as expressly stated in the ICB contract. As used herein, a
10 “Material Condition” is a reasonable and, non-discriminatory *and narrowly*
11 *tailored* material justification that is relevant to the basis for the rates,
12 terms and conditions extended to the Original End User. *The Parties*
13 *agree that any dispute between the Parties as to whether an End User or*
14 *aggregation of End Users is a “Similarly Situated End User” will not be*
15 *subject to the provisions of Section 6.0 of the Agreement unless otherwise*
16 *mutually agreed by such Parties and absent such mutual agreement, the*
17 *disputing Party may proceed with any remedy available to it pursuant to*
18 *law, equity or agency mechanism and, consistent with 47 C.F.R.*
19 *§51.613(b), SBC-4STATE shall bear the burden of proof to demonstrate*
20 *that any restriction on the resale of an ICB is reasonable and*
21 *nondiscriminatory.”*
22

23 **Q. What is your comment regarding SBCI’s first proposed addition?**

24 A. I agree with SBCI that “this Commission will determine how UCS can aggregate
25 end users” and thus the cross-reference is appropriate in this section.

26
27 **Q. Do you agree with SBCI’s second proposed addition?**

28 A. Yes. Cross-class selling is one of the few resale restrictions adopted by the FCC
29 and thus, such addition should not be controversial.

30
31 **Q. What is your comment regarding SBCI’s third proposed addition?**

32 A. I agree with SBCI that some network architecture or configuration requirements
33 “could dramatically affect the cost of offering the service” and I also agree that
34 “UCS is not entitled to resell an ICB to an end user who would present

1 significantly higher costs than SBCI's original end user."⁶ Unfortunately, SBCI's
2 proposed language does not capture such intent. In fact, under SBCI's proposed
3 language, *any* difference in network architecture or configuration requirements
4 would prevent UCS from reselling an ICB to a new end user. This is hardly a
5 "reasonable and nondiscriminatory" resale restriction.

6
7 **Q. What is your recommendation regarding this proposed language?**

8 A. I recommend that the resale restriction be made more specific and that it be tied
9 to differences in cost to SBCI. Hence, I propose that the provision read as
10 follows: "(ii) do not have different network architecture or configuration
11 requirements that would result in significantly higher costs when compared to
12 SBC Illinois' original end user."

13
14 **Q. What is your comment regarding SBCI's next proposed addition?**

15 A. I strongly disagree with SBCI that its proposed "material condition" criteria "serve
16 as a "catch-all" to address factors that are relevant but were not anticipated in
17 drafting this agreement."⁷ This is exactly what the FCC was trying to avoid when
18 it declared all resale restrictions "presumptively unreasonable" and allowed
19 ILECs to rebut this presumption "only if the restrictions are narrowly tailored"⁸
20 SBCI's proposed "catch-all" hardly seems to be narrowly tailored. Again, the
21 Commission should state its preference for specificity with respect to resale
22 restrictions and thus either eliminate the "material condition" criteria entirely or, at

⁶ SBCI Ex. 1.0 p. 28, line 709.

⁷ Id. p. 29, lines 742-744.

⁸ First Report and Order at ¶ 939.

1 a minimum, allow UCS' proposed inclusion of the words "narrowly tailored". I
2 highly recommend the former, given the FCC's strong directives in this context.
3 In either case, I recommend including the example cited for a material condition
4 (services available from a specific wire center only) as a stand-alone restriction
5 that is deemed reasonable and nondiscriminatory, in accordance with my
6 recommendation on issue 1.

7
8 **Q. What is your recommendation regarding UCS' proposed language at the**
9 **end of the definition?**

10 A. I believe UCS is only partly right. I certainly agree that SBC Illinois bears the
11 burden of proof to show that any resale restriction is reasonable and
12 nondiscriminatory. At the same time, I do not understand why this would
13 translate into a complete circumvention of the otherwise applicable dispute
14 resolution process found in the agreement. In addition, if the Commission adopts
15 some of my recommendations, there will be some resale restrictions in the
16 agreement that the Commission deemed reasonable and nondiscriminatory
17 already. The parties should have a chance to attempt to work out any
18 differences in the interpretation of such restrictions. Of course, if such attempts
19 fail, the parties will be able to present their case to the Commission.

20
21 **Issue 6**

22 **Q. What is the parties' disagreement in issue 6?**

23 A. The disagreement revolves around the proper insertion of a provision from a
24 previous Commission arbitration decision. The arbitration in question is the one

1 between SBCI and McLeodUSA (Docket No. 01-0623). In that arbitration, the
2 Commission required SBCI to allow an end user to re-establish service with SBCI
3 and waive the term liability in case the Customer Service Record (“CSR”) for that
4 end user failed to reflect the existence of a term liability.

5
6 **Q. Does SBCI disagree with the insertion of such provision into the**
7 **agreement?**

8 A. No. SBCI will include such provision but it also proposes to include a related
9 provision from the McLeod USA interconnection agreement. SBCI’s proposed
10 language states that *“if CLEC elects to terminate an SBC Illinois retail contract,*
11 *which CLEC had previously assumed, CLEC will be assessed the applicable*
12 *termination charges remaining unless CLEC elects to simultaneously replace the*
13 *existing contract with a contract of greater term and/or volume at the same*
14 *discount CLEC receives for the previously assumed but now terminated*
15 *contract.”*

16
17 **Q. Do you find the proposed additional provision to be objectionable?**

18 A. No. I do not find that SBCI’s proposed language adds something that is contrary
19 to UCS’ or SBCI’s obligations. In addition, UCS has not stated that it disagrees
20 with the proposed addition. That could be a result of the fact that SBCI did not
21 provide UCS with the proposed addition before UCS filed the petition and its
22 testimony.⁹

23

⁹ Joint statement of Craig Foster and Chris Surdenik at 55.

Issue 9

Q. What is the dispute regarding issue 9?

A. Issue 9 concerns the question of who has the burden to prove that restrictions on resale are reasonable and nondiscriminatory. It appears to primarily be a legal issue, which we will fully address in our legal briefs.

Issue 10

Q. What seems to be the primary disputes in issue 10?

A. By reading the testimony of both parties on this issue, it appears that there is agreement that aggregation of end user demand is permitted unless there are “economic justifications” for not allowing aggregation. The dispute concerns the exact language in the agreement that would reflect the FCC’s pronouncements in this area.

Q. Is SBCI’s proposed language achieving the goal of reflecting the FCC’s directives with respect to aggregation?

A. No. In fact, SBCI’s proposed language seems to turn the FCC’s mandate on its head. First, SBCI’s proposed language makes the exception look like the rule and not the other way around when it states in section 3.1.2. that “subject to section 3.1.2.1., except where otherwise explicitly permitted in SBC Illinois’ corresponding retail tariff(s), CLEC shall not permit the sharing of a service by multiple end users or the aggregation of traffic from multiple end users onto a single resale service.” SBCI’s proposed language further states that “to the

1 extent required by applicable law [...] CLEC may [...] aggregate individual end
2 user accounts on a given offering to meet the minimal usage requirement of such
3 offering.”

4
5 Second, and more importantly, SBCI introduces several other conditions and
6 requirements when it states that aggregation is “subject to (i) any material
7 condition (as defined in Section 3.1.2.1.3) of the particular resale service at
8 issue; (ii) Sections 3.1.5.1 and 3.1.11 herein, (iii) any reasonable and non-
9 discriminatory economic justification for prohibiting aggregation, and (iv) any
10 aggregated end users being similarly situated (as defined in Section 3.1.2.1.3
11 herein) to the original end user.

12
13 Such language is a far cry from the FCC’s finding that “restrictions on resale of
14 volume discounts will frequently produce anticompetitive results without sufficient
15 justification.”¹⁰ The FCC further concluded “such restrictions should be
16 considered presumptively unreasonable.”¹¹

17
18 **Q. What is your proposed language in this area?**

19 **A.** I recommend that the Commission order the following language be included in
20 section 3.1.2:
21

¹⁰ First Report and Order at ¶ 953.

¹¹ Id.

1 *“With respect to volume usage discount offerings, CLEC may, for*
2 *purposes of complying with SBC Illinois' high-volume discount minimum*
3 *usage requirements of a resale service, aggregate individual end user*
4 *accounts on a given offering to meet the minimal usage requirement of*
5 *such offering, unless SBC Illinois presents a reasonable and non-*
6 *discriminatory economic justification for prohibiting such aggregation.”*

7
8 **Issue 12**

9 **Q. What is the dispute concerning Maximum Annual Discounts (“MADs”) in**
10 **issue 12?**

11 A. Issue 12, like issue 9, appears to address primarily legal matters concerning
12 reasonable restrictions on resale, which Staff will address in its legal briefs.

13
14 **Issue 14**

15 **Q. What is the dispute in issue 14?**

16 A. Issue 14 concerns UCS’ aggregation rights. It is almost identical to issue 10,
17 which addresses aggregation in general. Issue 14 concerns language proposed
18 by UCS in Section 3.1.6., which states that *“except as found to be reasonable*
19 *and non-discriminatory after review by a Commission in accordance with 47*
20 *C.F.R. § 51.613(b), when providing a volume-based Resale Service to CLEC*
21 *(e.g., CompleteLink) SBC-4STATE will not impose on CLEC any limitations on*
22 *the number of business End Users or locations that may be associated with such*
23 *volume-based Resale Service.”*

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Q. Do you agree with UCS’ proposed language?

A. Yes. I do, however, propose addition language. I agree with SBCI that “the Commission may be able to address specific cases of restrictions on aggregation in advance.”¹² For this reason, I recommend including a reasonable and non-discriminatory restriction into Section 3.1.2 of the agreement. The restriction is the one most often provided by SBCI and is also used in the definition of “similarly situated end user” in issue 4. At the end of the proposed language for Section 3.1.2., I recommend including: “Further, it is reasonable and nondiscriminatory for SBC Illinois to restrict the resale of a telecommunications service (or a feature or functionality of the service) to customers being served by a specific wire center in the event the service (or a feature or functionality of the service) is available from that specific wire center only.”

Second, I believe my proposed language in Section 3.1.2. (see issue 10 above) is sufficient to address the issue of aggregation and UCS’ proposed Section 3.1.6. appears to be unnecessary.

Issue 15

Q. What is SBCI’s position?

A. SBCI wants to prohibit UCS from reselling “save” and “winback” offerings to any SBCI end user, including the end users that are being offered “save” and “winback” offerings by SBCI. Instead, SBCI wants to restrict UCS’ use of “save”

1 and “winback” offerings to customers that are considering leaving UCS or have
2 left UCS recently.

3
4 **Q. What is UCS’ position?**

5 A. UCS demands that it be able to resell “save” and “winback” offerings to the same
6 universe of end users as SBCI currently does. In other words, UCS wants to be
7 able to resell such offerings to all former SBCI end users and current SBCI end
8 users that received a competitive offer.

9
10 **Q: What are the concerns with SBCI’s proposal?**

11 A: If the Commission were to adopt SBCI’s position, SBCI will enjoy a built-in
12 advantage over UCS when the two providers compete for the same customer.
13 This occurs when SBCI decides to lower its rates (through “save” or “winback”
14 offerings) for some customers while denying UCS the opportunity to resell at
15 equally lower rates. By adopting this proposal, the provisions of the resale
16 obligations under the Telecom Act are being compromised. If SBCI is allowed to
17 decide when to offer lower rates to its customers (in this case, at the threat of
18 leaving SBCI or after leaving SBCI) without a change in costs, then SBCI should
19 not be allowed to deny the resale of services at correspondingly lower rates. The
20 intent of the resale provisions of the Telecom Act is to give other providers an
21 opportunity to resale the ILEC’s services at a discount. If the ILEC can simply
22 lower its rates to its retail customers without giving reseller a discount on those
23 lower rates, the initial resale discount becomes meaningless.

¹² SBCI Ex. 1.0 p.57, lines 1440-1441.

1
2 **Q. Are you proposing that SBCI be prevented from lowering its rates as a**
3 **result of competitive pressure?**

4 A. Not at all. Lower rates are one of the benefits usually associated with increased
5 competition. The customer in question should be the ultimate beneficiary of
6 competition. SBCI's proposal, however, makes competing for the same
7 customer more difficult. SBCI has effectively two sets of rates at its disposal, one
8 being the regular tariffed rate and the other being the "save" or "winback" rate.
9 While the Commission should not prevent SBCI from using either set of rates, it
10 should make sure resale competitors get an equal sized discount, no matter what
11 set of rates SBCI decides to offer its customers. If SBCI decides to offer its
12 customers the regular tariffed rates, UCS is receiving its statutory discount
13 (based on the avoided costs) while, under SBCI's proposal, UCS would not
14 receive the same discount if SBCI decides to offer its customers the "save" or
15 "winback" rates. The Commission should avoid such an outcome if SBCI and
16 UCS compete for the same customer. Below I will argue that such an outcome is
17 unavoidable in situations where UCS is not actively competing for the same
18 customer.

19
20 **Q. What are the concerns associated with UCS' proposal?**

21 A. UCS' proposal would demand that SBCI notify UCS every time an SBCI end user
22 receives a competitive offer or leaves SBCI for another provider. Such a
23 requirement is certainly beyond the intent of the resale obligations. More

1 importantly, it is not always UCS that prompts SBCI to lower its rates for its
2 customers. For example, if an SBCI end user receives a competitive offer from
3 Globalcom and SBCI lowers its rates as a result, it is hard to argue that UCS will
4 not be able to compete if it is not able to resell at a lower rate.¹³ It is for these
5 reasons that I recommend that the Commission reject UCS' proposed language.

6
7 **Q. What is your recommendation regarding the resale of “save” and**
8 **“winback” offerings?**

9 A. I recommend that SBCI be required to make its “save” and “winback” offerings
10 available for resale to UCS only when UCS and SBCI compete for the same
11 customer. Such an outcome has the benefit of affording UCS the ability to
12 compete on a level playing field when directly competing with SBCI. At the same
13 time it ensures that SBCI is not required to practically “invite” UCS to compete
14 whenever it engages in “save” and “winback” operations.

15
16 **Issue 16**

17 **Q. What is the dispute with respect to issue 16?**

18 A. UCS maintains that the agreement should require SBCI “to provide
19 nondiscriminatory access to information concerning Customer Service Records
20 (“CSRs”), ICBs and retail services that is available to SBC’s employees and
21 representatives.”¹⁴ SBCI argues that all such information is (or will be) available
22 to UCS and that, by “requesting additional information via CSRs, UCS attempts

¹³ Of course, if UCS is courting a customer that receives an offer from both GlobalCom and SBCI, UCS should still be able to resell save or winback offerings since it is still competing with SBCI for the same customer.

1 to garner special treatment for itself that no other CLEC (facilities-based or
2 resale) receives.”¹⁵

3
4 **Q: What is your understanding of UCS’ request?**

5 A: UCS uses its desire to access termination liability information as its primary
6 reason to request changes to SBCI’s CSRs. It seems to me that the method of
7 gaining access to such information should be somewhat irrelevant provided that
8 the information is delivered in a timely and easily accessible manner.

9
10 **Q. Has SBCI agreed to provide UCS with all relevant information regarding**
11 **rates, terms, and conditions about ICBs and retail services?**

12 A. Apparently yes. SBCI agreed that “all ICB information will be available to it via
13 the ICB site, including termination liabilities contained in any specific ICB.”¹⁶
14 SBCI further indicated that termination liabilities or any other information
15 concerning a tariffed product is available from the tariff itself.

16
17 **Q. Given SBCI’s contention that all relevant information is (or will be) made**
18 **available, what are UCS’ remaining concerns in this area?**

19 A. That is a question I directed at UCS during the discovery process. UCS’
20 response addresses three distinct areas of contention. First, UCS objects to
21 SBCI’s proposed redaction of unspecified “proprietary information” when posting
22 ICBs on the new website. Second, UCS wants to have access to all existing

¹⁴ Joint statement of Craig Foster and Chris Surdenik p. 94, lines 8-10.

1 ICBs. Third, UCS complains about the lack of certain information in SBCI's
2 tariffs.

3
4 **Q. What is your recommendation regarding the use of proprietary information**
5 **in the posting of ICBs?**

6 A. As discussed by the parties in issue 2, SBCI proposes to add a provision in the
7 agreement that would "clarify that it is not required to disclose its proprietary
8 information if for some reason that information is included in an ICB."¹⁷ I agree
9 with UCS that such an additional restriction seems rather vague. At a minimum, I
10 would recommend the Commission require SBCI to indicate on an ICB that
11 certain proprietary information was withheld. My preference would be, however,
12 that such a provision not be included in the agreement unless SBCI can provide
13 the Commission with specific situations and examples that would fall under the
14 "proprietary information" category. To date, SBCI has not done so.

15
16 **Q. What is your recommendation regarding the "backlog" of existing ICBs?**

17 A. As described during the discussion of issue 1, I recommend that the Commission
18 make available a limited number of existing ICBs to UCS.

19
20 **Q. What is your recommendation regarding the alleged lack of specificity**
21 **concerning some of SBCI's tariffs?**

¹⁵ SBCI Ex. 1.0 p. 60, lines 1510-1512.

¹⁶ Id. p. 62, lines 1586-1587.

¹⁷ Id. p. 18, lines 472-473.

1 A. If important features such as billing increments are indeed occasionally missing
2 from SBCI's tariffs, CLECs do not have all the relevant information available in
3 order to compete effectively. It is therefore my recommendation that the
4 Commission require SBCI to examine its existing retail tariffed offerings and
5 propose any potential changes to them as expeditiously as possible. These
6 proposed changes should be for the limited purpose of adding specificity to the
7 existing tariffs without changing the substance of the tariffed offerings.

8
9 **Q. SBCI contends that even if "in isolated cases 18/6 billing is not tariffed",**
10 **UCS will receive 18/6 billing just as SBCI's end users do. What is your**
11 **response?**

12 A. The fact that UCS would get the same terms and conditions as SBCI's end users
13 does not overcome the underlying problem, which is the lack of UCS' awareness
14 of such terms and conditions. In other words, because UCS would receive the
15 same terms and conditions if it is able to guess in which tariff they are offered,
16 such guesswork does not reduce the need for full disclosure. This situation is
17 similar to the situation concerning ICBs in general since ICBs need to be made
18 publicly available to CLECs in order for the CLECs to be able to resell them.

19
20 **Issue 17**

21 **Q: What is the dispute with respect to issue 17?**

22 A: At issue is whether the Commission should prohibit SBCI from marketing to an
23 end user following a termination liability inquiry from a CLEC.

1
2 **Q. Do you agree with SBCI that “until a customer has entered a contract with**
3 **UCS, SBC Illinois has every right to continue to solicit business from that**
4 **customer and offer that customer competitive service, and the same**
5 **applies to UCS?”¹⁸**

6 A. Yes. I agree that SBCI should not be prohibited from competing for customers
7 that have expressed an interest in switching service providers.
8

9 **Q. Given SBCI’s broad contention that such a prohibition “would harm**
10 **competition and the telecommunications consumer” , do you agree with**
11 **SBCI in each and every case?¹⁹**

12 A. No. As the Commission has found in Docket 02-0160,²⁰ there are instance
13 where a company should be prohibited from engaging in winback activities.
14 However, in that case the Commission found that SBCI failed to provide
15 acceptable quality of service to its competitors. UCS does not demonstrate,
16 however, that this is the case here.
17

18 **Issue 18**

19 **Q: What are the main areas of dispute?**

20 A: There appear to be four separate points of contention with respect to issue 18.
21

¹⁸ SBCI Ex. 2.0 p.18, lines 436-438.

¹⁹ Id., lines 453-54.

²⁰ Z-Tel successfully argued that SBCI should be prohibited from using winback for a limited period of time since SBCI was not providing Z-Tel with timely and accurate Line Loss Notifications.

1 **Q. What is the first area of dispute?**

2 A. UCS is demanding that it should be able to request an end user's termination
3 liability information from SBCI on UCS' behalf. UCS is citing the Commission's
4 ASCENT decision for such authority.

5

6 **Q. Do you believe SBCI should be required to provide term liability**
7 **information to UCS' agents?**

8 A. No. The Commission, in its ASCENT decision, specified that the calculation of a
9 termination charge should be performed upon "oral or written request from a
10 customer" and that "the customer should be permitted to designate a
11 telecommunication services provider as an agent for the purpose of requesting
12 and receiving such calculation." I agree with SBCI that requiring it to provide that
13 information to a CLEC's agent – that is, two parties removed from the end user –
14 is neither required nor practical."

15

16 **Q. What is the second area of dispute?**

17 A. UCS demands that SBCI be required to provide UCS with the "basis" for term
18 liability calculations. SBCI contends that such a requirement is not consistent
19 with the ASCENT decision.

20

21 **Q: What is your recommendation?**

22 A: SBCI is correct that the ASCENT order does not require SBCI to provide the
23 "basis" for such calculations in each case. It is a fact, however, that the ASCENT

1 order places the burden of proof on SBCI in the event there is a dispute. Thus, I
2 recommend striking the words “basis therefore/and or” in section 3.1.10.1 and
3 adding a sentence that stems directly from the ASCENT order. The added
4 sentence should read: “in the event of a dispute with respect to such calculation,
5 the burden of proving the correctness of the calculation should lie with SBCI.”²¹
6

7 **Q. What are the other two areas of dispute?**

8 A. At issue is whether an end user should be allowed to designate a
9 telecommunications service provider as an agent for the purpose of requesting
10 and receiving termination liability information. SBCI wants to deny such right to
11 its end users unless they receive the services addressed in the Commission’s
12 ASCENT order. UCS asks that such rights not be limited to those specific
13 services.
14

15 **Q. What is your recommendation?**

16 A. While I recognize that the ASCENT order speaks only to certain services, I do
17 not see any good reason for denying such right to end users generally,
18 irrespectively of the services they subscribe to. SBCI does not dispute that the
19 end users themselves can request such information at any time.²² It does not
20 seem logical to forbid them to authorize an agent to perform such a request on
21 their behalf. To alleviate SBCI’s concerns about “breaching an end user’s
22 confidence by disclosing such information to a CLEC”, I recommend the

²¹ ASCENT Order at 36.

²² SBCI Ex. 2.0 p. 15, lines 378-380.

1 Commission require UCS to obtain written authorization from the end user and
2 provide SBCI with such written authorization every time UCS makes such a
3 request on behalf of an end user. Moreover, since SBCI refers repeatedly to the
4 competitive nature of the telecom market, in some cases it will be SBCI itself that
5 benefits from allowing end users to designate an agent; for example, when SBCI
6 is courting a customer who is currently receiving service from a CLEC. Also,
7 current regulations allow customers to designate an agent in many situations,
8 such as when switching long distance or local exchange providers.

9
10 SBCI's sole ground for opposition seems to be its belief that "the ASCENT order
11 is controlling on this matter and does not mandate such a broad obligation."

12 Although I am not an attorney, I do not believe the ASCENT decision made a
13 finding about services not addressed in that order. In other words, it did not
14 prohibit end users that do not receive the exact same services addressed by that
15 order from designating an agent for the purpose of requesting and receiving
16 termination liability information.

17
18 **Q. SBCI argues that the issue of termination liability is currently being**
19 **examined in Docket No. 03-0553 and thus should not be addressed here.**
20 **Do you agree?**

21 **A.** No. While it is true that TDS MetroCom's complaint will give the Commission an
22 opportunity to examine SBCI's termination liability methodology, I do not believe
23 that it bars the Commission from giving end users the opportunity to designate an

1 agent in order to determine their potential termination liability information. I agree
2 that the termination liability methodology could be changed as a result of TDS
3 MetroCom's complaint. In that event the ICA's change of law provision should
4 provide protection to both parties. More importantly, SBCI argues in the
5 complaint case that the Commission should not require SBCI to change its
6 methodology unless and until the Commission initiates a new proceeding that
7 would examine termination liabilities on an industry-wide basis.

8
9 **Issue 24**

10
11 **Q.** What is the nature of the parties' dispute with regard to Issue 24?

12
13 **A.** While SBCI proposes to reference specific orders and decisions in the
14 Intervening Law provision, UCS argues that SBCI's proposed provision should
15 not include such references. UCS contends that including these references to
16 specific orders and decisions "bear no relation to the Resale Services that UCS
17 seeks to purchase under this Agreement"²³. Additionally, UCS seeks to have
18 standard "Change of Law" provision in this Agreement that will address any
19 future changes that will affect Resale Services.

20
21
22 **Q. Does Staff's have a recommendation with respect to this UCS Issue 24 at**
23 **this time?**

24 **A.** Although I am not a lawyer, it is my understanding that resolutions of
25 disputed issues with respect to this interconnection agreement are subject

²³ UCS Joint Statement p. 127, lines 10-11.

1 to standards that differ from those that the parties may use to determine
2 whether particular portions of the agreement are mutually acceptable.
3 Staff will withhold its ultimate recommendation until the briefing portion of
4 this proceeding.

5
6

7 **Q. Does this conclude your testimony?**

8 **A. Yes.**